

MEMORANDUM FOR: Director of Personnel

Medical

Harry:

After reviewing this with Mr. Coffey, I have approved the recommendations. The approval is, in our minds, an approval in principle because we have some questions we would like to ask which, in fact, might have been answered in your submission. Not necessarily in order, they are: In what manner did we in 1956 adopt the State Overseas Medical Program?; What was the language we used ourselves?; Is there perhaps a memorandum that was approved by the then DCI?; Was it an adoption of a statutory authority or did we do it by adopting their regulatory structure?; Did State in fact make the change with which we are now concerned in 1969 as suggested by Larry Houston's note?; What was their language in making this change and, if in principle it is our intent to follow State, do we have some system for staying current with their changes?; If the coverage beyond 120 days is to be a waiver action by the Director of Medical Services, is a fixed six-month review by him often enough, particularly in those cases which are not clearly and solely attributed to the overseas exposure, or should there not perhaps be some variation, depending upon the circumstances of the illness?

We would like the opportunity to see this background material and your comments when you submit the necessary regulatory revisions to accomplish this change. In respect to the revision, I think note must be taken of the last sentence of John Warner's memorandum and the question of whether State made the change itself only in September 1969. What did they do about retroactive application?



Robert S. Wattles

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Att

Memo dtd 4 Jan 71 for DD/S fr D/Pers, subj:
Agency Overseas Medical Program, w/Refs A & B

ADD/S:RSW/ms (12 Jan 71)

Distribution:

- Orig & 1 - Adse, w/O of Att (DD/S 71-0073)
- 1 - DD/S Chrono, w/cy of Att
- 1 - DD/S Subject, w/cy of Att ✓

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	Deputy General Counsel Rm. 7-D-07, Hqs. <i>Rec'd 1/5/71</i>	<i>5 Jan 11</i>	
2	Director of Medical Services Rm. 1-D-4067, Hqs. <i>Rec'd 1/6/71</i>	<i>11/18/71</i> JAN 1971	
3	Deputy Director for Support Rm. 7-D-26, Hqs.		
4			
5	Director of Personnel Rm. 5-E-56, Hqs.		
6			

ACTION	DIRECT REPLY	PREPARE REPLY
APPROVAL	DISPATCH	RECOMMENDATION
COMMENT	FILE	RETURN
CONCURRENCE	INFORMATION	SIGNATURE

Remarks:

1-3. What we are doing, in effect, is merely curing an administrative oversight as we should have amended our regulations at the same time the State Department changed their regulations on 8 September 1969

[Signature]
Lawrence R. Houston

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FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO. *4 JAN 1971* DATE

Director of Personnel

Rm. 5-E-56, Hqs.

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71-0023

4 JAN 1971

MEMORANDUM FOR: Deputy Director for Support

SUBJECT : Agency Overseas Medical Program

REFERENCE : (a) Memo for D/Pers fr D/MS, Subj: Extent of Overseas Medical Benefits for Dependents -
[redacted] dtd 10 Sept. '70

(b) Memo for D/Pers fr D/GC, Subj: Agency Overseas Medical Program, dtd 23 Nov. '70

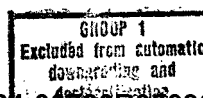
1. This memorandum submits recommendations for your approval; such recommendations are contained in paragraph 5.

2. The Offices of General Counsel, Medical Services and Personnel



the State Department's Overseas Dependent Medical Program in 1956, there was no intent to provide anything less than the coverage offered by State to its employees and we have always believed that we were doing so. D/GC has identified deficiencies in our regulations which will be corrected so as to conform

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to the Department's regulations. D/GC goes on to say in paragraph 4 of referent (b) that the Agency may, by appropriate regulation and policy decision, limit the maximum amount of benefits whether or not waiver is granted and suggests a periodic review, after the initial waiver, to determine when benefits should be reduced or discontinued.

4. On the matter of limitations on benefits after waiver of the 120-day periods, we already have one form of limitation governing benefits payable after the initial period of 120 days. Under existing practice, in cases where a waiver has been granted, the D/MS is asked by OP to review the medical circumstances of the case at hand each six months. If he determines that the patient has not yet obtained the maximum benefit of treatment, benefits will continue. If maximum treatment has been attained, benefits are terminated. There should be no difficulty in developing additional standards to govern the payment of benefits beyond the 120-day period. D/GC concludes that there would be no legal objection to your affirming that the State Department regulatory provisions and limitations on benefits after waiver of the 120-day period were intended to be a part of Agency policy in administering the Overseas Medical Program. We believe it proper and appropriate that you do so.

5. It is recommended, therefore, that you affirm the intent to include in the Agency's Overseas Medical Program for dependents:

- a. the State Department's regulatory provisions, and
- b. limitations on benefits after waiver of the 120-day period.

SIGNED

Harry B. Fisher
Director of Personnel

CONCUR:

Date

8 JAN 1971

Date

The recommendations contained in paragraph 5 are approved:

Deputy Director for Support

Date

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Distribution:

0 - Return to Director of Personnel

1 - D/GC

1 - D/MS

~~2~~ - DD/S

2 - D/Pers

1 - DD/Pers/SP

1 - C/BSD

1 - C/PAB

OP/D/SP [] slr (31 December 1970)

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10 September 1970

MEMORANDUM FOR: Director of Personnel

ATTENTION :

SUBJECT : Extent of Overseas Medical Benefits for Dependents -- Case of

REFERENCE :

1. A finding that illness in a dependent is clearly caused by an overseas residence is, at times, a simple matter. The nature of the case has a great deal to do with the ease of determination. For example, a finding of parasitic infestation prevalent to an area of assignment or a chance bullet wound associated with political unrest lend themselves to simple cause and effect relationships. When the illness, however, is in the field of the psyche, cause and effect relationships become less evident. Then the life history and total experience of the individual tends to relate to the later manifestation of illness. If the illness appears in a juvenile, then the onus in many ways seems to relate to the family situation. But to what extent each experience contributes to the clinical eruption of emotional illness is certainly more difficult to say than the earlier examples given regarding parasites or physical trauma. The point to be made is that clear causations may be a valid point in law in describing a benefit but the actualities in a given case may not be conducive to this all or none principle.

2. Because of this all or none principle, it may be that the Government will wind up paying indefinitely for cases declared clearly caused but based on preponderance of evidence. One wonders, in such cases, when benefits, as compared with rights, should cease.

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SUBJECT: Extent of Overseas Medical Benefits for Dependents --
Case [REDACTED]

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Likewise, one wonders about providing no benefit when a case is not clearly caused but in which a degree of evidence exists.

X1 3. The [REDACTED] is one of those that falls in the latter
X1 category. After a careful review of the case, a discussion with
[REDACTED] and a discussion with the Agency Regional Medical
X1 Officer, I believe the following observations to be true:

a. [REDACTED] illness was not clearly caused by
residence abroad.

b. Overseas residence contributed to the illness.

c. The illness is continuing, and granted a remission
is likely, the potential for future similar illness exists.

4. To try and translate the foregoing into some form of
benefit seems to be a difficult task. For such a reason, perhaps,
the law has attempted to limit benefits to those situations that
may be simply defined. It would seem that equity might be served
by also including cases less subject to definition. In the [REDACTED]
case, for instance, some benefit limited in time and amount might
more realistically represent the Government's share of attribution
than the choice of either all or none.

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5. Knowing of your personal interest in such matters, the
foregoing observations are submitted in hopes they may contribute
to the advances you have achieved in this important area.

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[REDACTED]
JOHN R. TIETJEN, M. D.
Director of Medical Services

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OGC 70-1964

23 November 1970

MEMORANDUM FOR: Director of Personnel

SUBJECT: Agency Overseas Medical Program

REFERENCE: Memo fr D/MS to D/Pers dtd 10 Sept 70;
Subject: Extent of Overseas Medical
Benefits for Dependents-- [redacted]
[redacted]

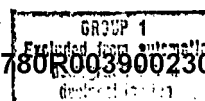
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1. The referent memorandum was forwarded to this office for consideration of the legal aspects. The Director of Medical Services points out that he cannot state that the son's illness in this case was clearly caused by residence abroad. On the other hand, he does conclude that overseas residence contributed to the illness. In such a situation, therefore, the Director of Medical Services finds difficulty in approving a waiver of treatment at Government expense beyond a period of 120 days since the statute concerned and our regulation (HR 20-41a(3) provide that the waiver can only be granted if the Director of Medical Services determines in writing "that the illness or injury is clearly caused by the fact that the dependent is or has been located abroad."

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2. Since the Agency authority in this area was adopted by the Agency from State Department's statutory authority, we looked at their regulations implementing the statute. Their regulation, 3 FAM 685.2c, provides that the Medical Director has the authority to extend treatment at Government expense beyond 120 days in those cases in which he determines the illness or injury is "clearly caused or materially aggravated by the fact that the patient is or has been located abroad." The regulation further included what might be called a "but for" rule saying that "such determination shall be made the basis of whether it may be reasonably assumed that the patient would not have incurred the illness or injury had he remained in the U. S."

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3. In our view the above regulatory wording is extremely important in determining how far the Director of Medical Services may go in making his determination. While at first look it may appear that such wording broadens the statutory language, we have found through research that analogous statutory words have been interpreted rather broadly by numerous courts in attempting to do equity in particular fact situations consistent with the spirit of the legislation involved. Consequently, it is our view that if this Agency had the same regulatory provisions as does the State Department, and if the Director of Medical Services can determine that overseas residence contributed to the illness, he could appropriately approve a waiver of the 120-day period.

4. The question has also been raised whether the Agency may in any way limit the reimbursement of medical expense once it does grant a waiver. The statute which we adopted provides that "the Secretary may, in accordance with such regulation as he may prescribe, pay" In our view, the Agency may, by appropriate regulation and policy decision, limit the maximum amount of benefits whether or not waiver is granted. It certainly would not be unreasonable to provide for periodic review of Government payment of benefits after the initial waiver, leaving in a designated official the authority to reduce or discontinue benefits, utilizing some reasonable standards in making such determination.

5. In the absence of formalized regulations establishing Agency policy to include (a) the State Department regulatory provisions and (b) limitations on benefits after waiver of the 120-day period, there would be no legal objection to the Deputy Director for Support, as the approving authority for regulations, affirming that these matters are and were intended to be a part of the Agency policy in administering the overseas medical program. After such affirmation, there would be no legal objection in applying such policy to cases arising prior to this date.

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JOHN S. WARNER
Deputy General Counsel

cc: OMS

TRANSMITTAL SLIP

11 January 1971

TO: Mr. Coffey
Mr. Wattles

ROOM NO.

BUILDING

REMARKS:

Recommend your approval. This is consistent with a proposal by the committee reviewing methods of relief for medical catastrophe situations.

[Redacted]

WEB

FROM:

ROOM NO.

BUILDING

EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)